

University of Miami Law Review

Volume 3 | Number 1

Article 13

12-1-1948

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Recommended Citation

Torts – Slander Of Title – Adoption of Restatement View in Florida, 3 U. Miami L. Rev. 64 (1948)
Available at: <https://repository.law.miami.edu/umlr/vol3/iss1/13>

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to the *officer's* (Italics ours) services." ¹¹ The cases indicative of the trend, however, appear to be limited to the "special relationship" situation.¹² This is apparently the first case in which such action has been taken regarding the salary paid to an unrelated employee. A possible reason for the Commissioner's holding may be found in the Tax Court report on this case.¹³ The questioning of the bookkeeper indicated that the Commissioner may have suspected fraud;¹⁴ however, fraud was not acknowledged as the reason for the decision. The use of the general term "unreasonable" in this situation, although apparently proper under 23 (a) 1,¹⁵ indicates a wide area of control over compensation by the Commissioner. In the absence of a special relationship, and where there is arm's length bargaining between employer and employee, it is submitted that the Commissioner should act with extreme caution in substituting his opinion for that of the parties as to what is a reasonable allowance for salary.

TORTS—SLANDER OF TITLE—ADOPTION OF RESTATEMENT VIEW IN FLORIDA

Plaintiffs, owners of real property, alleged that the defendants had falsely and maliciously altered a letter (by adding a legal description over the letter-head, a jurat, and by subscribing as witnesses) from a third party concerning construction of a house on plaintiff's land, so as to make it appear to be a contract of sale. It was also alleged that the defendants then recorded the letter, thereby slandering the title of the plaintiff; and that as a result the plaintiffs lost an opportunity of sale and profit. *Held*, that the declaration was sufficient to maintain an action for slander of title. *Lehman v. Goldin*, 36 So. 2d 259 (Fla. 1948).

The case, one of first impression in Florida, relied heavily on the *Restatement of Torts*,¹ which is in accord with the majority view.² The rule is

11. 1 RABKIN AND JOHNSON, FEDERAL INCOME, GIFT AND ESTATE TAXATION 726 (1947 ed.).

12. *Locke Machine Co. v. Comm'r of Int. Rev.*, 168 F. 2d 21 (C. C. A. 6th 1948) (Director-executive officers); *Taylor & Co. v. Glenn*, 62 F. Supp. 495 (W. D. Ky. 1945) (Stockholder-officers).

13. See note 1 *supra*.

14. *Supra* note 1, at 411—"Q. How were the moneys that were paid to you under this agreement paid? Were they paid to you by check or cash? . . . A. It was paid to me by check and I turned around and cashed them. Q. As a matter of fact, many of them were paid in cash out of large checks that were drawn and used to pay various expenses, and to pay some money to you and some to either or both of the Pattons? A. Yes. . . . Q. What did you do with the moneys that were paid to you . . . did you invest them in anything? A. Why, no. . . . Q. Did you deposit it in any bank? A. No. . . . Q. Did you have some war bonds? A. Yes. . . . I don't know how much. Q. What did you do with the balance? A. I got it. Q. What did you do with it? Where did you keep it? A. I kept it at home."

15. See note 2 *supra*; see Note, 56 HARV. L. REV. 997 (1943).

1. RESTATEMENT, TORTS §§ 624, 625, 626 (1938).

2. *Gudger v. Manton*, 21 Cal. 2d 537, 134 P. 2d 217 (1943); *Greenlake Investment Co. v. Swarthout*, 349 Mo. 232, 161 S. W. 2d 697 (1942); *Dwelle v. Home Realty and*

that when one, without privilege to do so, *e.g.*, "maliciously,"³ publishes untrue and disparaging matter regarding the property of another, which could foreseeably influence the acts of a third party as to that property, he is liable for any loss occurring therefrom.

The court cites three rules of the *Restatement*,⁴ the first two relating to slander of title, the last pertaining to disparagement of quality, *e.g.*, trade libel, without distinguishing as to their applicability to the instant case. While the first two are applicable the last is not. Although the confusion of trade libel with slander of title does not affect the result in the present case, it may have dangerous repercussions in future litigation. The defense of belief in the truth of the statement is not available in the case of disparagement of *property* (slander of title) whether the published matter is in the form of a declaration of fact or opinion.⁵ However, in the case of disparagement of *quality* (trade libel) the defense is available only when the statement is one of opinion.⁶ Certain "privileges to do so," *e.g.*, situations denying liability or implied malice as set forth in the *Restatement*, are applicable only in actions of slander of title and not trade libel and *vice versa*. Being an adverse claimant⁷ is a privilege only available in an action of slander of title, while being a competitor⁸ or seeking to protect the health,⁹ safety or property interests of the recipient of the publication or third parties¹⁰ is only available in a trade libel suit.

It is submitted that the instant case leaves a large area of doubt as to how much of the law set forth in the *Restatement* relating to trade libel and slander of title, a field totally devoid of decisions in Florida, has been or will be adopted by implication from this decision.

Investment Co., 134 Kan. 520, 7 P. 2d 522 (1932); *Kelly v. First State Bank of Rothsay*, 145 Minn. 331, 177 N. W. 347 (1920); *Coffman v. Henderson*, 9 Ala. App. 553, 63 So. 808 (1913); *Collins v. Whitehead*, 34 Fed. 121 (C. C. Colo. 1888). See Note, 9 A. L. R. 931 (1920).

3. *Cawrse v. Signal Oil Co.*, 164 Ore. 666, 103 P. 2d 729 (1940); *Witmer v. Valley National Bank of Des Moines*, 223 Iowa 671, 273 N. W. 370 (1937); see Note, 129 A. L. R. 179 (1940). For discussion of substitution of "without a privilege to do so" in place of "malice" in the *Restatement* see, *Winfield, Restatement of the Law of Torts—Volume III*, 17 N. Y. U. L. Q. Rev. 1, 13, 14 (1939).

4. RESTATEMENT, TORTS §§ 624, 625, 626 (1938); § 624 provides for liability in slander of title if defendant, without privilege to do so, publishes false matter disparaging the title to property and influences the conduct of a third party, which result although not intended was foreseeable; § 625 provides for liability in slander of title action although the defendant believes in the truth of the disparaging matter, does not act out of ill will, nor intend to influence the actions of a third party; § 626 provides for liability in trade libel action if defendant, without privilege to do so, publishes a false matter disparaging the quality of property and influences the conduct of a third party, which result although not intended was foreseeable.

5. RESTATEMENT, TORTS §§ 625 (b), comment c; § 626, comment c (1938).

6. RESTATEMENT, TORTS § 627, 628(2), comment c (1938).

7. *Briggs v. Coykendall*, 57 N. D. 758, 224 N. W. 202 (1929); *Kelly v. First State Bank of Rothsay*, *supra*; RESTATEMENT, TORTS § 647 (1938).

8. *Pennsylvania Iron Works Co. v. Henry Vogt Machine Co.*, 139 Ky. 497, 96 S. W. 551 (1906); RESTATEMENT, TORTS § 649 (1938).

9. *Wilson v. Sun Publishing Co.*, 85 Wash. 503, 148 Pac. 774 (1915).

10. RESTATEMENT, TORTS § 650 (1938).